

APPEAL NO. 031107
FILED JUNE 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 31, 2003. The hearing officer resolved the disputed issues by deciding: (1) that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; (2) that the date of the claimed injury is _____; (3) that the respondent (carrier) is relieved from liability of benefits pursuant to Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001; and (4) that the claimant does not have disability. The claimant appeals the compensable injury and timely notice determinations on sufficiency of the evidence grounds. The carrier responded, urging affirmance. The disability determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed as reformed.

The claimant had the burden to prove that she sustained a compensable injury and that she gave timely notice of injury to her employer. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities for the employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Conflicting evidence was presented at the CCH. The finder of fact may believe the claimant has an injury, but disbelieve that the injury occurred at work. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ) The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We reform the decision paragraph of the decision and order to correct a clerical error and change, "the carrier is relieved from disability under TEXAS LABOR CODE, Section 409.002" to read "the carrier is relieved from liability under TEXAS LABOR CODE, Section 409.002" (Emphasis added.)

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**HAROLD FISHER-PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge